

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 261

August 21, 1964

## STATUTE OF LIMITATIONS: REFUND CLAIMS

### Syllabus:

On July 25, 1958, C Corporation filed refund claims for alleged overpayments of franchise taxes in calendar taxable years 1951, 1952, and 1953. The corporation contends that the claims are timely because of a Federal waiver executed by the corporation and the Commissioner of Internal Revenue extending until September 30, 1956, the period for the assessment of Federal income taxes for the calendar taxable years 1950, 1951, and 1952, and because Federal deficiency notices were mailed for said years within the limitation period as extended by said waiver.

(1) To what date is the Bank and Corporation Tax Law statute of limitations for assessment of proposed deficiencies and for the filing of refund claims extended under the facts above?

(2) What is the "date of final determination" as that term is used in Section 25432 of the Bank and Corporation Tax Law?

Section 26073(a) provides, in substance, that the period in which a taxpayer may claim a refund is automatically extended to the date in which the State may propose a deficiency, in cases where the taxpayer and the Commissioner of Internal Revenue have agreed to an extension of the period for proposing and assessing a Federal deficiency.

Chapter 20, Article 1, Section 25663a provides:

"Extension of federal waiver. If any taxpayer agrees with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period for mailing notices of proposed deficiency tax for such year shall be four years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in federal income tax, whichever period expires the later."

Chapter 22, Article 1, Section 26073a provides:

"Extension of period by waiver. If (1), the taxpayer has, within the period prescribed in Section 26073 agreed in writing under the

provisions of Chapter 20, Article 1, to extend the time within which the Franchise Tax Board may propose an additional assessment, or, (2) the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period within which a claim for credit or refund may be filed, or credit for refund allowed or made if no claim is filed, shall be the period within which the Franchise Tax Board may issue a notice of proposed additional assessment under such circumstances. The provisions of this section shall apply to any claim filed, or credit, or refund allowed or made before the execution of such agreements."

Federal waiver form (872) reads as follows:

Form 872 (Rev. 6-57)  
U. S. TREASURY DEPARTMENT -- INTERNAL  
REVENUE SERVICE  
CONSENT FIXING PERIOD OF LIMITATION  
UPON ASSESSMENT OF INCOME  
AND PROFITS TAX  
To be executed in triplicate

In Reply Refer to: \_\_\_\_\_, 19\_\_\_\_. In pursuance of the provisions of existing Internal Revenue Laws \_\_\_\_\_, a taxpayer (or taxpayers) of \_\_\_\_\_, and the District (Street Address) (City) (State)\_\_\_\_\_.

Director of Internal Revenue (or Assistant Regional Commissioner -- Appellate) hereby consent and agree as follows: That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended under existing acts, or under prior revenue acts, may be assessed at any time on or before except that, if a notice of deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the making of an assessment is prohibited and for sixty days thereafter. Taxpayer \_\_\_\_\_ Taxpayer By \_\_\_\_\_ District Director of Internal Revenue By \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

The present case is distinguishable from those previously considered in that they involved statutory extensions, not agreed extensions. This discussion herein is limited to agreed extensions. From a historical standpoint information respecting the Federal income tax liability of Federal taxpayers is made available to this Board under the Internal Revenue Code. That information would be of little or no value to this Board if, by virtue of the granting by the taxpayer of extensions to the Commissioner of Internal Revenue for the completion of examinations or audits and the assessing of deficiencies, the period for assessment of the state tax expired before the Federal information was available to the

state. It was to meet this situation that the Bank and Corporation Tax Law was amended in 1943.

A literal interpretation of the waiver makes clear that it includes any extended period to which the taxpayer and the Collector of Internal Revenue have agreed in writing. If it were otherwise part of the reason for the said 1943 amendment would be defeated.